

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in respect of Interim Order-cum-Show Cause Notice dated December 9, 2014 in the matter of Midas Touch Assets and Securities Limited.

In respect of:

Sr. No.	Noticees	PAN	DIN/CIN
Company			
1.	Midas Touch Assets and Securities Limited	AABCJ2925P	U74140OR1995PLC004269
Promoters / Director(s)			
2.	Soubhagya Kumar Samal	AMYP3013P	02169620
3.	Nirupama Samal/Thatoi	AGGPT2796Q	02183778
4.	Swarna Lata Samal	ARCPS6416R	02761654
5.	Debasis Prasad Mishra	AKWPM6994P	06560400
6.	Swetanshu Shekhar Samal	BBNPS8548C	06560414

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- Securities and Exchange Board of India (hereinafter referred to as 'SEBI') passed an interim order-cum-show cause notice dated December 9, 2014 ("**interim order**") against the Noticees as they were prima facie found to have been responsible for the offer and allotment of redeemable preference shares (RPS) in contravention of the first proviso to section 67(3) of the Companies Act, 1956 and consequently in breach of sections 73, 60 and 56 of the Companies Act, 1956 and regulations 4(2), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
 - Prior to the interim order, SEBI received complaints against Midas Touch Assets and Securities Limited (hereinafter referred to as '**Midas Touch**' or '**the Company**') for the alleged illegal money mobilization activities through the issuance of RPS. Based on the complaints, SEBI conducted an examination in the matter and on the basis of the examination, SEBI vide the interim order dated December 9, 2014 issued *inter alia* the following directions to Midas Touch and its Promoters/Directors that they be:-

- (i) restrained from mobilizing funds through the issue of equity shares or through any other form of securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
- (ii) prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly or through other companies in which they are directors/promoters, till further directions;
- (iii) restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further directions; and
- (iv) prohibited from diverting any funds raised from public at large through the issuance of the impugned equity shares or redeemable preference shares, kept in its bank accounts and/or in the custody of the company without prior permission of SEBI until further orders.

Midas Touch and its promoters / directors were further directed not to dispose of any of the properties or alienate the assets of the Company and to provide SEBI with a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.

3. Further in the aforesaid interim order, Midas Touch and its promoters/ directors were asked to show cause as to why suitable directions/ prohibitions, under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with ICDR Regulations should not be passed against them. Midas Touch and its promoters/ directors were directed to file their replies/ submissions within a period of 21 days from the date of receipt of the Order and also indicate whether they desire to avail an opportunity of personal hearing in the matter.
4. The interim order could not be delivered to Midas Touch or any of its directors and hence a public notice was issued in respect of the company and all its directors. The interim order-cum-show cause notice was also uploaded on the SEBI website. Even though the company and its promoters / directors failed to respond to the interim order- cum- show cause notice, three opportunities of personal hearing were granted to all the noticees in order to comply with the principles of natural justice scheduling the same on August 19, 2015, December 15, 2015 and February 4, 2016. However, the noticees failed to appear for the personal hearing. Thereafter, SEBI caused a publication in newspaper on March 3, 2017, regarding the personal hearing scheduled on March 4 & March 6, 2017. However, even after the paper publication, none of the noticees appeared for

the hearing nor submitted any reply or sought any extension. In view of the same, I am convinced that sufficient opportunities have been granted to the noticees and they are not keen to avail any opportunity of hearing in this regard. I further note that the noticees have not even filed any written reply/submission to the interim order cum-show cause notice. In view of these facts and circumstances, I deem it appropriate to decide the matter *ex-parte* on the basis of material available on record.

5. I have considered the interim order dated December 09, 2014. From the interim order, it is noted that Registrar of Companies, Odisha ("RoC") had stated that it had perused various documents filed by the Company and it is seen that the Company has filed Form No. 2 relating to return of allotment of RPS on various dates. The particulars of the same given by RoC are as under:

Date of Allotment	No. of allottees	No. of shares allotted	Amount raised (in ₹)	Type of Security
28-08-2009	5	10,000	1,00,000	EQ. Share
27-10-2010	765	35,33,000	3,53,30,000	RPS
29-12-2010	1,333	71,18,500	7,11,85,000	RPS
30-03-2011	999	48,69,500	4,86,95,000	RPS

6. The above particulars regarding issue of RPS were corroborated from MCA 21 portal and a letter dated May 30, 2014 to SEBI sent by the company's Auditor M/s. Patro & Company.
7. At this juncture, it is relevant to refer to Section 67 of the Companies Act, 1956 which deals with the conditions or circumstances under which an offer of shares/debentures by a company would be construed as one made to the public. Extracts of the relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced as under:

"Construction of reference to offering shares or debentures to the public, etc.

67. (1) *Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*

(2) *Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*

(3) *No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-*

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

***Provided** that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:*

***Provided further** that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."*

8. Therefore the following points are apparent from the aforesaid provisions of the Companies Act, 1956 -

- In accordance with the first proviso to section 67 (3) read with the second proviso, any offer of shares/debentures to more than 49 persons would be deemed to be a public offer, provided that the shares/debentures are not issued by a Non-Banking Financial Company or Public Financial Institution.
- Where the shares/debentures are offered and allotted by a company which is not an NBFC or PFI, even though the number of allottees may be less than 49, whether such offer is a public offer or not, still needs to be checked with reference to clauses (a) and (b) of section 67(3) of the Companies Act, 1956 or section 42(7) &(8) of the Companies Act, 2013 as the case may be.

9. I note from the records available that the noticee company has clearly made allotment to more than 49 persons. Considering this information in conjunction with other records available with the Board, I do not find any reason to differ with the conclusions arrived at in the interim orders. The legal provisions and the case law cited in the interim orders clearly render the matter within the jurisdiction of the Board. In view of the above, I am in agreement with the interim orders' prima facie conclusion that the offer and allotment of RPS by the noticee company qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

10. From the above, it will follow that such a public issue makes it imperative for the noticee company to comply with the mandate of sections 73, 60 and 56 of the Companies Act, 1956 and regulations 4(2), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, none of which have been complied with by the noticees. Since the aforesaid legal provisions and relevant case law have already been discussed in detail in the interim orders, for the sake of brevity I do not find it necessary to discuss the same in this final order against the noticees. It would suffice to state the aforesaid legal provisions and case law discussed in the said interim orders are applicable to the offer and allotment of RPS by the noticee company, since I find that the offer in the instant case is deemed to be a "public issue". For the sake of determining consequential measures, I draw reference to section 73 (1) & (2) of the Companies Act, 1956, extracts of which are reproduced as under:

"Allotment of shares and debentures to be dealt in on stock exchange.

73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) ...

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, **the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.**

....”

(emphasis supplied)

11. In terms of Section 73(2) of the Companies Act, 1956, the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1). The interim order was issued against Midas Touch, Soubhagya Kumar Samal, Nirupama Samal/Thatoi, Swarna Lata Samal, Debasis Prasad Mishra and Swetanshu Shekhar Samal. These persons are either the present or former directors of the Company. The following table presents (information from RoC/MCA) the dates when the noticees were appointed as directors and also the dates of their resignation :

Sl. No.	Name of the Promoter/ Director	Date of Joining/ Appointment	Date of Resignation
1	Nirupama Samal/Thatoi	24.06.2009	25.04.2013
2	Swarna Lata Samal	28.08.2009	25.04.2013
3	Soubhagya Kumar Samal (Chairman & Managing Director)	24.06.2009	Continuing
4	Debasis Prasad Mishra	25.04.2013	Continuing
5	Swetanshu Sekhar Samal	25.04.2013	Continuing

12. The allotment of RPS were made during FY 2010-2011. From the details pertaining to the tenure of the directors, as mentioned in the table above, it can be inferred that –
- Soubhagya Kumar Samal, Nirupama Samal/Thatoi and Swarna Lata Samal were the directors of the Company when the Company made the offer and allotment of RPS during 2010- 2011 in violation of the law, and
 - Debasis Prasad Mishra and Swetanshu Shekhar Samal had joined the board subsequent to the allotment of RPS.
13. Debasis Prasad Mishra and Swetanshu Shekhar Samal joined the Company's board subsequent to the allotments, and are presently the directors of Midas Touch. They along with the Company and

the other directors as mentioned in the forgoing paragraph are jointly and severally liable to make refunds as such liability is not yet discharged, in terms of section 73(2) of the Companies Act along with interest.

DIRECTIONS

14. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue, with immediate effect, the following directions:-

- i Noticees namely, Midas Touch, Soubhagya Kumar Samal, Nirupama Samal/Thatoi, Swarna Lata Samal, Debasis Prasad Mishra and Swetanshu Shekhar Samal shall jointly and severally refund the money collected through the offer and allotment of redeemable preference shares of Midas Touch with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment) within a period of 90 days from the date of receipt of this Order;
- ii The refund as directed hereinabove shall be made through banking channels such as demand draft or electronic mode of transfer and a trail of such refunds shall be maintained by the Noticees for verification, if necessitated at a later date;
- iii Within seven days of completion of refund as directed hereinabove, the Noticees shall file a certificate of such completion with SEBI from two independent Chartered Accountants after proper verification of the details of such refunds from records including bank accounts of the Noticees and after being satisfied that the refund has actually been made.
- iv Till the refund, as directed above, is complete, the Noticees Nos. 1- 6 are hereby—
 - (a) restrained from accessing the securities market;
 - (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
 - (c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.

15. For a period of four years from the date of completion of the refund, as directed in para 14 above, the Noticees Nos. 1-6 are hereby—

- (a) restrained from accessing the securities market;

- (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
- (c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.

16. In the event of the Noticees failing to comply with the directions of refund stated in para 14 above, SEBI shall initiate recovery proceedings in accordance with the provisions of the SEBI Act, 1992.
17. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
18. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on company and directors.

Place: Mumbai

Date: September 18, 2017

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA